

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

04 12699 RWZ

CIVIL ACTION  
NO.

PETITION OF K&R FISHING  
ENTERPRISES, INC., FOR  
EXONERATION FROM OR  
LIMITATION OF LIABILITY,  
CIVIL AND MARITIME

MAGISTRATE JUDGE LRC

RECEIPT # \_\_\_\_\_  
AMOUNT \$ 19.00  
SUMMONS ISSUED \_\_\_\_\_  
LOCAL RULE 4.1 \_\_\_\_\_  
WAIVER FORM \_\_\_\_\_  
MCF ISSUED \_\_\_\_\_  
BY DPTY. CLK. MLP  
DATE 12/21/04

TO THE HONORABLE THE JUDGES OF THE UNITED STATES  
DISTRICT COURT IN AND FOR THE DISTRICT OF MASSACHUSETTS

The Petition of K&R FISHING ENTERPRISES, INC. for exoneration from/or limitation of liability, in connection with the loss of the F/V NORTHERN EDGE on December 20, 2004 in a cause of limitation of liability, Civil and Maritime, alleges on information and belief as follows:

**First:** The F/V NORTHERN EDGE, a 75 foot fishing vessel, was owned solely by K&R FISHING ENTERPRISES, INC., a Massachusetts corporation with a principal place of business within this District at 84 Front Street, New Bedford, Massachusetts 02740. On or about December 16, 2004, the F/V NORTHERN EDGE departed New Bedford, Massachusetts and proceeded upon a voyage to the fishing grounds on the high sea on Georges Bank. The said F/V NORTHERN EDGE at the commencement of her voyage aforesaid was tight, strong,

fully manned, equipped and supplied and in all respects seaworthy and fit for the service in which she was engaged.

**Second:** On December 20, 2004, the F/V NORTHERN EDGE, while fishing and on information and belief, experienced severe weather conditions and fouled its dredge on the sea's bottom causing the vessel to broach and capsize and sink with five of its six crewmembers presumed lost at sea.

**Third:** The aforesaid event and resulting loss, damage, and injury was not caused by or contributed to by any negligence or fault on the part of the Petitioner or of those whom the Petitioner is responsible, and Petitioner denies any such loss, damage, injury, and destruction was done, occasioned by, or occurred with any privity or knowledge of your Petitioner.

**Fourth:** No suits, to Petitioner's knowledge, have to date been commenced for loss or damage or injury resulting from the aforesaid casualty. Your Petitioner fears that libels, suits, or claims may be filed, begun or asserted against the F/V NORTHERN EDGE or your Petitioner or either of them on behalf of other persons for alleged damages sustained as a result of said casualty.

**Fifth:** The F/V NORTHERN EDGE is a total loss and no salvage was recovered. There were no freights pending at the time of the casualty.

**Sixth:** The Petitioner claims exemption from liability for any and all loss, destruction, damage, and injury occasioned or incurred by or resulting from the casualty and for all claims for damages that have been made or may hereafter be made, and by reason of the facts hereinbefore set forth, the Petitioner desires in this proceeding to contest its liability and the liability of said vessel to any extent whatsoever for any and all loss, destruction, damage and injury caused by or resulting from the matters aforesaid.

**Seventh:** Not admitting, but denying any liability of itself or of said vessel for any loss, destruction, damage and injury occasioned or incurred by reason of the matters aforesaid or subsequent damages resulting there from, the Petitioner further claims the benefits of the Limitation of Liability provided by Sections 4283, 4284, 4285, and 4286 of the *Revised Statutes of the United States Code, Chapter 46, Appendix Sections 183, 184, 185 and 186 of the United States Code* and the various statutes amendatory thereof and supplementary thereto, and to that end the Petitioner is ready and willing to give a stipulation with sufficient surety for the payment into Court of the amount or value, if any, of its interest in the F/V NORTHERN EDGE, together with her pending freight, if any, at the end of the said voyage,

whenever the same shall be ordered by the General Admiralty Rules and the practice of this Honorable Court.

**Eight:** All and singular the premises are true and within the admiralty and maritime jurisdiction of the United States and this Honorable Court.

**WHEREFORE,** your Petitioner prays:

(1) That the Court cause due appraisement to be made of the amount or value of the Petitioner's interest in the F/V NORTHERN EDGE and her pending freight, if any;

(2) That the Court make an order directing the Petitioner to file a stipulation with surety to be approved by the Court, for the payment into Court of the amount of the Petitioner's interest in the said vessel whenever the Court shall so order or issue an order excusing the Petitioner from furnishing a stipulation;

(3) That the Court make an order directing the issuance of a Monition to all persons claiming damages for any and all loss, injury, damage, or destruction done, occasioned or incurred by or resulting from the loss of the F/V NORTHERN EDGE citing them to file with the Clerk of this Court in said order and make due proof of their respective claims, and also to appear and answer the allegations of this Petition according to the law and practices of this

Court at or before a certain time to be fixed by the monition;

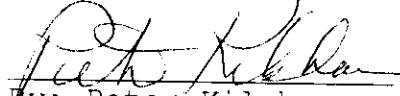
(4) That the Court make and order directing that on the giving of such a stipulation as may be determined to be proper, or the Court making an order excusing the Petitioner from giving a stipulation, an Injunction shall issue, restraining the prosecution of all actions, suits or other proceedings already begun to recover for damages, arising out of or occasioned by or consequent upon the loss of the F/V NORTHERN EDGE on December 20, 2004, as stated in the Petition, and the commencement or prosecution hereafter of any suit, action or legal proceeding against the petitioner or the petitioner's agents, representatives, officers, or employees in respect of any claim or claims arising out of the aforesaid voyage of the F/V NORTHERN EDGE;

(5) That the Court in these proceedings will adjudge that the Petitioner is not liable to any extent for any loss, damage, injury or for any claim whatsoever in any way arising out of or in consequence of the loss of the F/V NORTHERN EDGE on December 20, 2004, above described, or if the Petitioner shall be adjudged liable, then such liability shall be limited to the amount of its interest in the F/V NORTHERN EDGE at the end of the voyage in which she was engaged at the time she was lost, if any, and that a decree

may be entered discharging the Petitioner from any and all further liability; and

(6) That the Petitioner may have such other or further relief as the justice of the cause may require.

**K&R FISHING ENTERPRISES, INC.**

  
By: Peter Kilshaw  
Its: Treasurer

**COMMONWEALTH OF MASSACHUSETTS**

Bristol, SS:

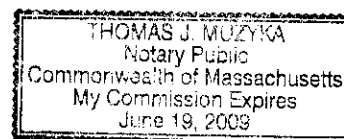
December 26, 2004

Then personally appeared, the above named, Peter Kilshaw, and made oath that he is the Treasurer of K&R FISHING ENTERPRISES, INC. and that he executed the foregoing Petition and that the statements therein contained are true to the best of his knowledge, information, and belief.

Before me,

  
Notary Public

My Commission Expires: 6-19-09



## CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

## I. (a) PLAINTIFFS

K&amp;R FISHING ENTERPRISES, INC.

(b) County of Residence of First Listed Plaintiff BRISTOL  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

CLINTON &amp; MUZYKA, P.C.

ONE WASHINGTON MALL, BOSTON, MA. 02108

## DEFENDANTS

County of Residence of First Listed Defendant  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

617-723-9165

## II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff  
☒ 3 Federal Question (U.S. Government Not a Party)  
☐ 2 U.S. Government Defendant  
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   |   |   |   |
|---|---|---|---|
| Citizen of This State                   | PTF <input type="checkbox"/> 1 DEF <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | PTF <input type="checkbox"/> 4 DEF <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 <input type="checkbox"/> 2         | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 <input type="checkbox"/> 5         |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 <input type="checkbox"/> 3         | Foreign Nation  | <input type="checkbox"/> 6 <input type="checkbox"/> 6         |

## IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input checked="" type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <b>Habeas Corpus:</b> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 Third Party 26 USC 7609	

## V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding  
☐ 2 Removed from State Court  
☐ 3 Remanded from Appellate Court  
☐ 4 Reinstated or Reopened  
☐ 5 Transferred from another district (specify)  
☐ 6 Multidistrict Litigation  
☐ 7 Appeal to District Judge from Magistrate Judgment

## VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

46 USC Appendix Sections 183 et. seq.

Brief description of cause:

PETITION FOR EXONERATION FROM OR LIMITATION OF LIABILITY

## VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint

JURY DEMAND: ☐ Yes ☒ No

## VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

DECEMBER 27, 2004

THOMAS C. MUZYKA

RECEIPT #

AMOUNT

APPLYING FP

JUDGE

MAG. JUDGE

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

1. Title of case (name of first party on each side only) PETITION OF K&R FISHING ENTERPRISES, INC.  
FOR EXONERATION FROM OR LIMITATION OF LIABILITY CIVIL AND MARITIME

2. Category in which the case belongs based upon the numbered nature of suit code listed on the civil cover sheet. (See local rule 40.1(a)(1)).

- ☐ I. 160, 410, 470, R.23, REGARDLESS OF NATURE OF SUIT.
- ☐ II. 195, 368, 400, 440, 441-444, 540, 550, 555, 625, 710, 720, 730, 740, 790, 791, 820\*, 830\*, 840\*, 850, 890, 892-894, 895, 950. \*Also complete AO 120 or AO 121 for patent, trademark or copyright cases
- ☒ III. 110, 120, 130, 140, 151, 190, 210, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 370, 371, 380, 385, 450, 891.
- ☐ IV. 220, 422, 423, 430, 460, 510, 530, 610, 620, 630, 640, 650, 660, 690, 810, 861-865, 870, 871, 875, 900.
- ☐ V. 150, 152, 153.

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3. Title and number, if any, of related cases. (See local rule 40.1(g)). If more than one prior related case has been filed in this district please indicate the title and number of the first filed case in this court.

NONE

4. Has a prior action between the same parties and based on the same claim ever been filed in this court?

YES ☐ NO ☒

5. Does the complaint in this case question the constitutionality of an act of congress affecting the public interest? (See 28 USC §2403)

YES ☐ NO ☒

If so, is the U.S.A. or an officer, agent or employee of the U.S. a party?

YES ☐ NO ☐

6. Is this case required to be heard and determined by a district court of three judges pursuant to title 28 USC §2284?

YES ☐ NO ☒

7. Do all of the parties in this action, excluding governmental agencies of the united states and the Commonwealth of Massachusetts ("governmental agencies"), residing in Massachusetts reside in the same division? - (See Local Rule 40.1(d)).

YES ☐ NO ☒

A. If yes, in which division do all of the non-governmental parties reside?

Eastern Division ☐ Central Division ☐ Western Division ☐

B. If no, in which division do the majority of the plaintiffs or the only parties, excluding governmental agencies, residing in Massachusetts reside?

Eastern Division ☒ Central Division ☐ Western Division ☐

8. If filing a Notice of Removal - are there any motions pending in the state court requiring the attention of this Court? (If yes, submit a separate sheet identifying the motions)

YES ☐ NO ☐

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME THOMAS J. MUZYKA

ADDRESS CLINTON & MUZYKA, P.C. ONE WASHINGTON MALL, BOSTON, MA, 02108

TELEPHONE NO. 617-723-9165